November 8, 2010

Submitted Online (www.regulations.gov)
Water Docket
Environmental Protection Agency
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Washington, DC 20460

Submitted by Email (vabaytmdl@dcr.virginia.gov)
Department of Conservation and Recreation
Commonwealth of Virginia
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**RE: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Draft Total Maximum Daily Load ("TMDL") for the Chesapeake Bay; and Virginia Chesapeake Bay Watershed Implementation Plan ("WIP")**

To Whom It May Concern:

Thank you for the opportunity to comment on EPA's Draft TMDL for the Chesapeake Bay and Virginia's WIP. We own and operate a municipal separate storm sewer system ("MS4") within the Chesapeake Bay watershed. This drainage system conveys and discharges stormwater pursuant to a state-issued National Pollutant Discharge Elimination System ("NPDES") permit. To the extent that our MS4 conveys nutrients and sediments covered by the Draft TMDL, those pollutants originate predominantly from air deposition, fertilizer use or other third party sources, and the MS4 is simply a conduit.

Our most significant concerns with EPA's Draft TMDL and Virginia's WIP relate to the lack of transparency in this regulatory process, particularly regarding lack of disclosure and analysis of costs related to urban stormwater. We understand that in other EPA documents urban stormwater costs for the Bay TMDL have been estimated at an annual cost of $7.8 billion. Similarly, we understand that the Center for Watershed Protection has reported costs on the order of $88,000 per acre for urban retrofits. To translate these types of costs estimates to the household level, last month a national engineering firm reported to the Virginia Municipal Stormwater Association ("VAMSA") that EPA's

Draft TMDL's costs may be on the order of $700 to $1,800 per household per year, for urban stormwater management alone, during the 15-year implementation period. Obviously, costs in that range are extremely high if not completely unaffordable.

The City of Charlottesville has performed an analysis of the potential costs of the proposed Chesapeake Bay TMDL and the Virginia Watershed Implementation Plan. If the current EPA backstop requiring "50% of urban land to meet aggressive performance standards through retrofit/redevelopment" remains in the TMDL, the resulting annual costs to the City of Charlottesville could be as much as $15.6 million. Even without this backstop, the annual cost of this TMDL on the City is expected to be in the range of $1.6 million to $7.8 million per year. There are more cost effective ways than urban retrofits to achieve the needed nutrient reductions to the Bay. Treatment strategies to significantly reduce the agricultural loads, which are more cost effective per pound of nutrient removed, need to be explored.

The City of Charlottesville is located in the James River Watershed which enters the Bay at the most downstream point in the Bay. The EPA model indicates that the impact of the James Watershed on water quality in the Bay is significantly less than the majority of upstream watersheds and areas that drain directly to the Bay. The load allocations by watershed do not take this into account to the extent that it is equitable. Requiring the City of Charlottesville to implement aggressive and costly urban stormwater retrofits when the result will have little impact on the Bay is unnecessary and unfair.

The EPA backstops requiring 50% of urban land to meet aggressive performance standards through retrofit/redevelopment in the City of Charlottesville is unnecessary, unfounded and inappropriate. The cost of this requirement is expected to be $15.6 million per year and there is no scientific evidence that this level of treatment is needed.

Urban retrofits are an appropriate, but costly stormwater treatment strategy. Urban retrofits should be balanced with other aggressive stormwater treatment strategies focused on agricultural land. Stormwater BMPs on agriculture land are much more cost effective per pound of nutrient removed than urban retrofit BMPs. The current Bay TMDL and Virginia WIP require too much urban retrofits and too little agricultural BMPs.

While the details have not been determined, it seems very likely that much of the Bay TMDL and Virginia WIP will be implemented through the next generation of MS4 permits. Local governments do not have the funding to carry the financial burden of such an aggressive program. We agree that the Bay is truly a national treasure. Federal funding should be used to help localities comply with the Bay TMDL.

It is not clear how non-MS4 communities and agricultural land owners will be held accountable for meeting the necessary nutrient load reductions spelled out in the Bay TMDL. How can 60% of the Bay TMDL measures be in place by 2017 if such a large enforcement gap exists? It would be very unfair to the regulated MS4 communities to shoulder the reduction load merely due to the presence of existing enforcement programs. Competition for economic development needs to be considered between MS4 and neighboring non-MS4 communities. It is unfair to regulate one without the other.

It is obvious that the Chesapeake Bay TMDL modeling effort and TMDL development process has taken longer than anticipated. It is inappropriate to rush the details of such an important endeavor to

meet the December 31, 2010 deadline. More time is needed to discuss the details of the Bay TMDL, understand the cost ramifications, evaluate funding options, and coordinate with Virginia on its WIP before this program is finalized. "We understand that the Draft TMDL is materially flawed as a technical matter. Serious computer modeling deficiencies have been documented."

In addition, as the Chesapeake Bay Program has long ago determined, the James River does not influence mid-Bay water quality and any regulation of James River nutrient discharges should occur only for local water quality protection. Locally, the applicable water quality standard is a chlorophyll standard adopted by Virginia in 2005 and approved by EPA. However, the appropriateness of that standard is in question in part due to EPA's unilateral changes to the computer model it uses to judge the adequacy of Virginia's actions. In fact, Virginia has determined in its WIP (September 2010) at pages 14-15 that the chlorophyll standard is faulty and that "additional scientific study is needed to provide a more precise and scientifically defensible basis for setting final nutrient allocations." We agree with this finding and determination by Virginia, and we also support Virginia's "Four Part James River Strategy" at pages 15-17 of the WIP to address these major technical problems.

We want to emphasize that the City of Charlottesville is supportive of the general goals of the Chesapeake Bay cleanup but we have serious concerns about the process and current direction. We strongly urge the Commonwealth of Virginia to make the necessary modifications to the WIP to achieve the stated end results and to ensure that Virginia remains in control of key programs without EPA backstops. We also have serious concerns about the over reliance on nutrient trading schemes which, in effect, sacrifice one stream for the benefit of another. This is a short-sighted approach to a much more complex issue.

Thank you again for the opportunity to comment on the Draft TMDL and the Virginia WIP.

Sincerely,

James E. Tolbert, AICP
Director

JET:sdp

cc: City Council
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